



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 13 2017

Samuel Fisher
1751 NE Pine Island Road
Suite 155 - #162
Cape Coral, FL 33909

RE: MUR 7077

Dear Mr. Fisher:

This is in reference to the complaint you filed with the Federal Election Commission on May 31, 2016. On June 22, 2017, based upon the information provided in the complaint, and other available information, the Commission decided to exercise its prosecutorial discretion to dismiss certain allegations, find no reason to believe as to other allegations, and close its file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact Ray Wolcott, the attorney assigned to the matter, at (202) 694-1302.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

By: 
Jeff S. Jordan
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Allen Ellison MUR 7077
Ellison for Congress Campaign Committee
and Allen Ellison as treasurer¹
Allen Ellison for Congress Campaign
and Allen Ellison as treasurer²

I. INTRODUCTION

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act has occurred, to make no reason to believe findings. The Commission has determined that MUR 7077 is a low-rated matter that should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, the Commission dismisses the allegations that Allen Ellison in his individual capacity, Ellison for Congress Campaign Committee and Allen Ellison in his official capacity as treasurer ("2014 Committee"), violated the Act or Commission regulations with respect to activity by the

¹ Warren A. Lewis was the treasurer of record at the time the complaint was filed. Allen Ellison was designated as treasurer on July 22, 2016. See Ellison for Congress Campaign Committee Amended Statement of Organization, filed July 22, 2016.

² Susie Johnson was the treasurer of record at the time the complaint was filed. Allen Ellison was designated as treasurer on July 22, 2016. See Allen Ellison for Congress Campaign Committee Amended Statement of Organization, filed June 21, 2016.

1 2014 Committee, and the allegations that Allen Ellison in his individual capacity, Allen Ellison
2 for Congress Campaign Committee and Allen Ellison in his official capacity as treasurer ("2016
3 Committee") violated the Act or Commission regulations by failing to disclose the receipt of in-
4 kind contributions.³ Additionally, the Commission finds no reason to believe that Allen Ellison
5 for Congress Campaign Committee and Allen Ellison in his official capacity as treasurer violated
6 the Act or Commission regulations by failing to disclose the receipt of individual contributions.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 The Complaint alleges that Respondents violated multiple provisions of the Act and
9 Commission regulations by failing to file reports during the 2014 and 2016 election cycles and by
10 failing to report specific contributions and expenditures: a \$10,440 ballot access fee for the 2014
11 election cycle; a \$100 in-kind contribution in the form of two free tickets to a 2016 fundraiser;
12 unquantified costs associated with campaign literature and the Committee's website during the
13 2016 election cycle; and two small individual contributions during the 2016 election cycle.⁴
14 Respondents denied the allegations and argued that they had "followed the FEC rules and filed
15 accordingly."⁵

16 2014 Committee Reporting

17 Within fifteen days of becoming a candidate,⁶ the candidate must designate a principal
18 campaign committee by filing a Statement of Candidacy.⁷ Principal campaign committees for

³ Ellison sought election to Florida's 17th Congressional District seat in both 2014 and 2016. The 2014 Committee was established on April 29, 2014, as the candidate's principal campaign committee. The 2016 Committee was established on March 16, 2015, and designated the following day as the candidate's principal candidate committee.

⁴ Compl. at 5-7.

⁵ Resp. ¶ 8.

⁶ 52 U.S.C. § 30101(2), 11 C.F.R. § 100.3(a). Payment of a ballot access fee is considered an "expenditure" for purposes of determining whether someone is a candidate. See MUR 6513/Pre-MUR 517 (Cynthia Rodriguez

1 House candidates are required to file regular reports of receipts and disbursements.⁸ The value
2 of uncompensated voluntary services are not considered “contributions” and are therefore not
3 reportable.⁹ Contributions in a calendar year by an individual that exceed \$200 in the aggregate
4 must be itemized.¹⁰

5 The 2014 Committee issued a \$10,440 check on May 1, 2014, for a ballot access fee that
6 was later refunded.¹¹ This payment took Ellison over the \$5,000 “candidate” threshold,
7 triggering registration and reporting requirements. The 2014 Committee, however, did not file
8 its first disclosure report until August 2016, and that report did not disclose the receipts that
9 funded the \$10,440 ballot access fee payment, or explain how the 2014 Committee disposed of
10 the money after it was refunded.¹²

11 The available information supports the allegations that the 2014 Committee failed to file
12 disclosure reports during the election cycle. However, the total amount of the activity at issue is

Mathews) Factual and Legal Analysis at 2, n. 2; MURs 6374 and 6408 (Roly Arrojo for Congress); First Gen. Counsel’s Rpt. at 4; MUR 6315 (Alvin M. Greene) Factual and Legal Analysis at 5-6; *but see*, 52 U.S.C. § 30101(8)(b)(xii), 11 C.F.R. § 100.90 (payments made to any party committee by a candidate or an authorized committee of a candidate as a condition of ballot access are not considered contributions).

⁷ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁸ 52 U.S.C. § 30104(a)(2); 11 C.F.R. § 104.3.

⁹ 52 U.S.C. § 30101(8)(B)(i), 11 C.F.R. § 100.74. The candidate indicates in his response that he is a “graphic artist and web designer,” and he created the Committee’s website. Resp. ¶ 4. He also indicates that the domain expenses were “small and did not cross the filing threshold.” *Id.* at ¶ 5. Even if the services were reportable, it is likely that they did not exceed the itemized threshold and, therefore, may be included in the Committee’s disclosure reports. *See*, 52 U.S.C. § 30104(b)(3)(A).

¹⁰ 52 U.S.C. § 30104(b)(3)(A).

¹¹ Compl. Exs. D-E.

¹² *See* Statement of Organization (April 29, 2014) (designating the Committee as Ellison’s principal campaign committee). The 2014 Committee’s first disclosure report showed a zero balance as of April 1, 2016, and did not disclose any previous receipts or disbursements. *See* 2016 July Quarterly Report (August 21, 2016).

1 relatively low, and Ellison ultimately did not get on the ballot.¹³ Therefore, in furtherance of the
2 Commission's priorities, relative to other matters pending on the Enforcement docket, the
3 Commission exercises its prosecutorial discretion and dismisses the allegations that Allen Ellison
4 in his individual capacity, Ellison for Congress Campaign Committee and Allen Ellison in his
5 official capacity as treasurer failed to properly report receipts and disbursements in violation of
6 52 U.S.C. § 30104(a)-(b).¹⁴

7 2016 Committee Reporting

8 Respondents assert that the 2016 Committee properly reported all contributions and
9 expenditures during the 2016 election cycle.¹⁵ Respondents argue that although Ellison accepted
10 free admission to a fundraiser, he was one of the speakers, so he did not receive an in-kind
11 contribution.¹⁶ We do not know whether Ellison accepted anything other than free admission for
12 himself—and possibly a guest—to the event, but the *de minimis* value of any purported in-kind
13 contribution does not justify expending resources to determine the facts. Thus, the Commission
14 dismisses the allegation that Allen Ellison in his individual capacity, Allen Ellison for Congress
15 Campaign Committee and Allen Ellison in his official capacity as treasurer violated the Act or
16 Commission Regulations by failing to disclose the receipt of in-kind contributions.¹⁷

¹³ The 2014 Committee's activity did not meet any referral threshold from the Reports Analysis Division to OGC or the Alternative Dispute Resolution Office. Furthermore, the Committee's level of activity is not eligible for the Administrative Fines program.

¹⁴ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

¹⁵ Resp. at ¶ 3-8.

¹⁶ See Resp. ¶ 3, *see also*, 52 U.S.C. § 30104(b)(3)(A), 11 C.F.R. §§ 100.54(a), 100.54(d)(1). The event was a fundraising dinner for the Highlands County Democratic Party, located in Florida. See Compl. at 2; HIGHLANDS COUNTY DEMOCRATIC PARTY, <http://hcdp1.webs.com> (last visited Feb. 27, 2017).

¹⁷ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 As to website development and campaign literature costs, the Respondents assert that
2 Ellison personally designed and created both, and that the 2016 Committee disclosed all
3 associated reportable contributions and expenditures.¹⁸ As to the two small individual
4 contributions, the Committee argues that it reported both timely on its 2016 July Quarterly Report
5 after Ellison crossed the "candidate" threshold.¹⁹ Since there is no information indicating that
6 either contribution was required to be itemized, it is possible that the two small individual
7 contributions were part of the \$5,725.90 of non-itemized contributions disclosed on the
8 Committee's 2016 July Quarterly Report.²⁰ Accordingly, the Commission finds no reason to
9 believe that Allen Ellison for Congress Campaign Committee and Allen Ellison in his official
10 capacity as treasurer failed to report certain contributions and expenditures during the 2016
11 election cycle.

¹⁸ Resp. ¶ 4-5. The 2016 Committee reported an itemized disbursement of \$208.06 for "printing services" on the Committee's 2016 July Quarterly Report. See Ellison for Congress Campaign Committee 2016 July Quarterly Report, filed August 21, 2016, at 14.

¹⁹ Resp. ¶ 6-7.

²⁰ See 52 U.S.C. § 30104(b)(3)(A), Compl. Exs. L-M (There is no information indicating the amount of the Jan. 1, 2016, contribution by Sean Duclet and no name was attributed to the \$100 contribution received by the Committee on April 17, 2016. Therefore there is no information indicating that either contribution met the \$200 aggregate threshold for itemized reporting.)